

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

TONYA A. HUNTER, o/b/o
BRYAN A. DANIELEY, a minor,

Plaintiff,

v.

CIVIL ACTION NO. 1:05-0670

JO ANNE B. BARNHART,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered nunc pro tunc July 21, 2004, and filed in this case on August 18, 2005, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on June 16, 2006, and proposed that this court (1) confirm and accept the factual and legal analysis within his Proposed Findings and Recommendation, (2) grant plaintiff's motion for summary judgment (Doc. No. 8), (3) deny defendant's motion for judgment on the pleadings (Doc. No. 10), and (4) vacate the final decision of the Commissioner, (5) remand this matter to the Commissioner for further proceedings consistent with the proposed finding and recommendation; and (6) dismiss

this case from the court's active docket. (See Doc. No. 11 at 15.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). No objections have been filed by either party.


Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court hereby (1) **CONFIRMS** and **ACCEPTS** the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation except as herein modified, (2) **DENIES** plaintiff's motion for summary judgment (Doc. No. 8),* (3) **DENIES** defendant's motion for judgment on the

* The magistrate judge's findings and recommendation envision remanding this case to the Commissioner. This, however, is inconsistent with granting plaintiff's motion for summary judgment, which seeks only an order awarding the award of benefits. (See Doc. No. 8 at 1-2) (stating that plaintiff "demands that the administrative denial . . . be overturned and set aside and that this Court enter an Order . . . directing the Commissioner of the Social Security Administration to grant benefits for this claimant . . . in accordance with the applicable regulations pertaining to this claim."). Having reviewed the record in this case at length, the court believes that reversal and the award of benefits is manifestly

pleadings (Doc. No. 10), (4) **VACATES** the final decision of the Commissioner, (5) **REMANDS** this matter to the Commissioner for further proceedings consistent with the proposed finding and recommendation; and (6) **DIRECTS** the Clerk to remove this case from the court's active docket and to forward a certified copy of this written opinion and order to all counsel of record, to Magistrate Judge VanDervort and to any unrepresented party.

It is **SO ORDERED** this 5th day of July, 2006.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge

inappropriate. This is also in accord with the magistrate judge's reasoning, if not his explicit conclusion. As such, the court hereby **MODIFIES** the magistrate judge's proposed findings and recommendation's conclusions to conform with the analysis contained therein.